

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VIRGINIA MENDEZ,

Plaintiff,

vs.

Civ. No. 09-716 LH/RLP

**MICHAEL J. ASTRUE, Commissioner
of the Social Security Administration,**

Defendant.

**MEMORANDUM OPINION and ORDER AWARDING FEES
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER comes before the Court on Plaintiff's Motion for an award of attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) in the amount of Six Thousand Three Hundred Forty and 94/100s Dollars (\$6,340.94) [Docket No. 28]. In his Response, Defendant states that he has no objection to the amount of fees as requested, but requests that the award be payable to Plaintiff as prevailing party, and that if a future award of fees is made under 42 U.S.C. §406 of the Social Security Act, that Plaintiff's counsel be ordered to refund the smaller award to Plaintiff. [Docket No. 29].

Defendant's request that the smaller of the EAJA award or the §406 award be refunded to Plaintiff is premature. That issue will be considered if and when an award under §406 is sought.


Focusing on the plain language 28 U.S.C. § 2412(d)(1)(A) which states, the "court shall award to a prevailing party ... fees and other expenses," the Tenth Circuit has previously found that "an EAJA award is to the claimant." McGraw v. Barnhart, 450 F.3d 493, 497-498 (10th Cir.2006).

The court **FINDS**

- (1) That Plaintiff's Request for Fees under the Equal Access to Justice Act is Reasonable, and
- (2) The proper payee for fees awarded under the Equal Access to Justice Act is Plaintiff.

IT IS THEREFORE ORDERED that Plaintiff's Motion for attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), in the amount of Six Thousand Three Hundred Forty and 94/100s Dollars (\$6,340.94) is granted.

IT IS FURTHER THEREFORE ORDERED that the Commissioner shall make such fees payable to Plaintiff, but shall remit said fees to Plaintiff by sending payment in care of the offices of her attorney, Michael D. Armstrong.



SENIOR UNITED STATES DISTRICT JUDGE